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September 6, 2016

VIA HAND DELIVERY

Zoning Board of Appeals
City of Cincinnati
c/o Kevin Tidd, Secretary
805 Central Avenue, Suite 500
Cincinnati, OH 45202

**Re: The Dennison Hotel Building
716-718 Main Street Historic District
ZBA Case No. Z-4019-2016**

Honorable Zoning Board of Appeals of the City of Cincinnati:

In response to Appellant Columbia REI LLC's request to present additional evidence and its motion to strike certain evidence from the administrative record filed in the above referenced matter on August 26, 2016, Appellees Cincinnati Preservation Association and Cincinnati Preservation Collective (together, hereinafter, the "Preservation Organizations"), hereby respond as follows:

Response to Appellant's Request to Present Additional Evidence

Appellant's first and second requests for additional evidence (Exhibit "A" to Appellant's Request) are based on its belief that the written and oral statements of Urban Conservator Beth Johnson should have been sworn and subject to cross examination before the Historic Conservation Board ("HCB"). Because Ms. Johnson did not prepare her written and oral statements on behalf of or at the behest of the Preservation Organizations, but rather in her capacity as an official of the City of Cincinnati and as a professional advisor to the HCB, the Preservation Organizations do not take a position on whether the ZBA should allow Appellant to cross examine Ms. Johnson as the City is in the best position to make determinations about its administration of the HCB.

The Preservation Organizations likewise do not take a position on Appellant's third request related to statements made by City of Cincinnati Zoning Administrator Matthew Shad at the June hearing of the Board for the reasons set forth above.

With respect to Appellant's fourth request, Appellant's request should be denied because Appellant has failed to disclose that it offered the following five rebuttal witnesses in support of its application during the public comment portion of the June hearing: (a) Alan Bieber; (b) Craig Hilsinger; (c) Terry Brewy; (d) Chris Vertel; and (e) Lance Brown. (June Trans., pp. 113-129).

All five rebuttal witnesses testified under oath before the HCB. For example, Lance Brown, Appellant's appraiser, testified as a witness for Appellant at the May hearing and then returned to provide rebuttal testimony at the June hearing. And, while Appellant's rebuttal witnesses testified during the

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public comment portion of the June hearing, they are not random members of the Cincinnati public (e.g. Terry Brewy being from Chicago, Illinois, Chris Vertel being from West Chester, Ohio, and Craig Hilsinger being from Green Township, Ohio).

Prior to adjourning for deliberations, HCB Chairman Mike Burson inquired about whether Appellant had any additional rebuttal witnesses. (June Trans., p. 207). Appellant's counsel, Tim Burke, replied as follows: "...we've said from the very beginning, that we had the last word...[a]nd we just had that." (June Trans., p. 207). When Chairman Burson asked again about rebuttal witnesses, Appellant's counsel Fran Barrett failed to identify any and instead simply reiterated his objection to the HCB rules of procedure. (June Trans., p. 208).

The Board held a full and fair hearing according to the special rules of procedure agreed upon by the parties in advance of the hearing. Appellant admitted that it had the "last word" in the case, and when given the opportunity to identify additional rebuttal witnesses, they offered none. Appellant's fourth request is nothing more than an attempt to re-litigate this matter before this appellate body.

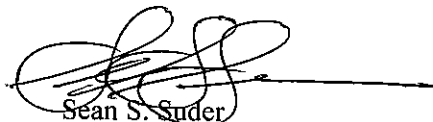
Response to Appellant's Motion to Strike Evidence

Cincinnati Zoning Code Section 1449-15, "Procedures for Appeals from Decisions of the Zoning Hearing Examiner or Historic Conservation Board," allows a party to submit *additional* evidence if the record is found to be deficient for any of the reasons set forth in Section 1449-15(d)(1)-(3). Otherwise, under Zoning Code Section 1449-15, the ZBA's review is confined to the record below.

While Zoning Code Section 1449-15(d) grants the authority to the ZBA to "enter such other order as justice may require," that grant of authority is made within the context of receiving additional testimony or evidence, not striking or removing evidence from the record: "The board may remand a matter to the examiner in order to cure any such deficiency or enter such other order as justice may require....Otherwise, the board may not receive any additional testimony or evidence." Zoning Code Section 1449-15(d)(3) (emphasis added). Zoning Code Section 1449-15 does not grant the ZBA the power or authority to strike, remove or eliminate evidence from the record upon objection of a party or otherwise. Therefore, Appellant's motion must be denied because the ZBA does not have the express authority to grant the requested relief.

Respectfully submitted,

GRAYDON HEAD & RITCHEY LLP

A handwritten signature in black ink, appearing to read "Sean S. Suder", with a long horizontal line extending to the right.

Sean S. Suder
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Association and Cincinnati Preservation
Collective

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